

REMARKS

The Examiner rejected claims 11, 12, 13-21 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner rejected claim 1 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention. The Examiner rejected claims 1, 3-7, 10-15, 17-19 and 21 under 35 U.S.C. § 102(b) as being anticipated by Loudon (U.S. Patent No. 1,428,487). . The Examiner rejected claims 8, 9, 16 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Loudon in view of Staas (U.S. Patent No. 6,047,499). In response, the Applicant has amended the claims and has set forth arguments supporting the patentability of the claims over Loudon and Staas. The Applicant believes the amendments made in response to the Examiner's rejections have placed the application in position for allowance.

Amendments to the Claims

Applicant has amended claims 1, 8-13, 17-19 and 21 to address the Examiner's rejection under 35 U.S.C. § 112, second paragraph for indefiniteness, to clarify the scope of the present invention and to more clearly distinguish the present invention from the prior art. Specifically, Applicant is amending these claims as set forth below:

a) claim 1 - amending this claim to clarify that the one or side walls extend upwardly from the bottom, to clarify that the upwardly facing surface of the bottom is configured to facilitate flow of fluids toward at least one of the side walls and add the limitation that the drainage orifice is located at or near the intersection of the bottom and the side wall to which the fluid drains;

b) claim 8 - amending this add the limitation that the drainage orifice is disposed in the side wall to drain fluids from the reservoir;

c) claim 9 - adding the limitation, previously in claim 1, that the upwardly facing surface of the bottom is generally concave, adding language to clarify that the center is higher than the intersection of the bottom and the side walls and removing the drainage orifice language (now in claim 8);

RESPONSE/AMENDMENT

Appl. # 10/656,714

1 d) claim 10 - adding the limitation, previously in claim 1, that the upwardly facing surface of the
2 bottom is generally concave, adding language to clarify that the center of the bottom is higher than the
3 intersection of the bottom and the side walls and removing the limitation regarding the drainage orifice
4 having a connector;

5 e) claim 11 - amending this claim to clarify that the stabilizer members extend downward from
6 the bottom and to describe the function of the stabilizer members as supporting the bottom so as to
7 facilitate the flow of fluid in the reservoir to at least one of the side walls;

8 f) claim 12 - amending this claim to incorporate the limitation that the inner stabilizer member is
9 configured to support the center of the bottom higher than its periphery;

10 g) claim 13 - amending this claim to clarify that the upwardly facing surface of the bottom is
11 configured to facilitate flow of fluids toward the side walls, incorporate the limitation that the facilitate
12 the flow of fluids to the side walls, as opposed to just supporting the center of the bottom higher than its
13 periphery, and adding the limitation that the drainage orifice is located at or near the intersection of the
14 bottom and one of the side walls;

15 h) claim 17 - amending this claim to incorporate the limitation that the inner stabilizer member is
16 configured to support the center of the bottom higher than its periphery;

17 i) claim 18 - amending this claim to delete the limitation of the one or more upper supports, add
18 language clarifying that the concave configuration results in the center of the bottom being higher than
19 its periphery to facilitate the flow of fluids to the side walls, to clarify that the stabilizer members extend
20 downward from the bottom and adding the limitation that the drainage orifice is located in the base
21 member near the intersection of the bottom and one of the side walls;

22 j) claim 19 - amending this claim to incorporate the upper support limitation removed from claim
23 18; and

24 k) claim 21 - amending this claim to incorporate the limitation that the inner stabilizer member is
25 configured to support the center of the bottom higher than its periphery.

1 Rejection under 35 U.S.C. § 112, first paragraph (Enablement)

2 The Examiner rejected claims 11, 12, 13-21 under 35 U.S.C. § 112, first paragraph, as
3 failing to comply with the enablement requirement in that the claims contain subject matter which was
4 not described in the specification in such a way as to enable one skilled in the art to which it pertains, or
5 is most nearly connected, to make and/or use the invention. Specifically, the Examiner is of the opinion
6 that, with reference to the language "said one or more stabilizer members sized and configured to
7 generally support the center of said bottom higher than the periphery of said bottom," it is unclear what
8 and how the bottom is higher than the periphery merely by the center rings being of greater length than
9 the outer rings. The Examiner is also of the opinion that, upon reviewing the figures, it is unclear how
10 the bottom could possibly be higher than the periphery. Respectfully, the Applicant believes the
11 Examiner has misunderstood the configuration and purpose of the "one or more stabilizer members"
12 with regard to the present invention. Properly interpreted, as set forth below, the specification does
13 describe the subject matter in the claims sufficient for one skilled in the art to make and/or use the
14 invention.

15 The most relevant portions of the original specification are set forth below:

16 **Section A (page 16, lines 1-12):** Bottom 24 of base member 22 has an upwardly facing surface
17 32 and an opposite directed downwardly facing surface 34, as best shown in FIGS. 4, 5 and 7. In
18 the preferred embodiment, bottom 24 of base member 22 is configured such that upwardly facing
19 surface 32 is concaved, with the high point being at or near the center of bottom 24 and the low
20 point being at or near the intersection of bottom 24 and side wall 26 so that any fluids in interior
21 tray compartment 28 will gravitationally flow toward this intersection and out drainage orifice
22 18. Preferably, inlet 36 of drainage orifice 18 is located at or near the bottom of side wall 26 so
23 that excess plant treating fluids draining from plant pot 12 will gravitationally flow across the
24 concave bottom 24 to inlet 36, flow through orifice 18, discharge from outlet 38 into the open
25 first end 40 of tubular member 20 and then through open second end 42 to the desired disposal
26 site.

1 **Section B (page 19, line 6 - page 20, line 1):** To better support drainage tray 10 above the
2 ground, deck, sidewalk or other support area where used with plant pot 12, downwardly facing
3 surface 34 of bottom 24 can comprise one or more stabilizer members 64 suitably sized and
4 configured to facilitate drainage of fluids into tubular member 20 and provide a spaced distance
5 vertically above the support area. In one configuration, shown in FIG. 7, stabilizer members 64
6 comprises a plurality of downward extending, spaced apart inner stabilizer members 66 and outer
7 stabilizer members 68 on the downwardly facing surface 34 of base member 22 that are sized and
8 configured to beneficially support drainage tray 10 so as to facilitate drainage of excess fluids
9 through tubular member 50. In the preferred embodiment, inner stabilizer members 66 extend
10 downward further than outer stabilizer members 68 such that when plant pot 12 is placed in or on
11 drainage tray 10, as shown in FIGS. 1 and 3, the center portion of base member 22 will be kept
12 above the periphery edge of bottom 24 to facilitate drainage of fluid to inlet 36 and the fluid
13 flowing through tubular member 20.

14
15 **Section C (page 21, lines 2-7):** An inner stabilizer member 66 of 3/16 of an inch and an outer
16 stabilizer member 68 of 3/32 of an inch can be placed on the downwardly facing surface 34 of
17 base member 22, as shown in FIG. 7.

18
19 As best set forth in the Section A text above, as well as elsewhere in the description, the
20 bottom of the base member is configured to drain fluids from the interior tray compartment or reservoir,
21 formed by the bottom and side walls, to the periphery of the bottom at the intersection with the side wall
22 so the fluid will drain through the drainage orifice to the tubular member. In the preferred embodiment
23 of the present invention, the bottom of the base member is configured to be concave, such that a point at
24 or near the center of the bottom is positioned higher than the peripheral edge (i.e., at the intersection of
25 the bottom and the side wall) of the bottom to facilitate the flow of fluid and other materials to the
26 peripheral edge of the bottom where the inlet to the drainage orifice is located. This configuration, the

1 center of the bottom being higher than the peripheral edge of the bottom, will result in a generally cone
2 shaped bottom (with a circular-shaped bottom) that results in better fluid flow to the drainage orifice and
3 out the tubular member so the fluid and materials carried by the fluid drains away from the drainage tray.
4 Naturally, the degree of the downward angle from the center to the periphery of the bottom does not
5 have to be that substantial to achieve drainage and the shape of the tray base will result in different
6 configurations than a cone (i.e., more of a pyramid shape for a square shaped bottom). As set forth
7 elsewhere in the specification, this drainage reduces or eliminates the accumulation of fluid in the
8 drainage tray, thereby reducing the likelihood of odors, mosquito infestation and other problems
9 associated with standing fluid.

10 As discussed in the description, in one preferred embodiment the drainage tray of the
11 present invention is made out of a molded plastic material. As persons familiar with plant pots and
12 drainage trays would know, depending on the thickness of the material used for the bottom and the
13 weight of the plant pot placed on the bottom, it is possible that the weight of the plant pot will collapse
14 the concaved shaped (preferred embodiment) bottom and essentially or substantially flatten it out,
15 thereby reducing or eliminating the drainage benefits described above. As set forth in Section B above,
16 to prevent the collapse of the drainage-configured bottom, the preferred embodiment includes stabilizer
17 members on the downward facing surface of the bottom that are configured to maintain the drainage
18 aspect of the bottom. In a preferred embodiment, the stabilizer members comprises a plurality of
19 downward extending inner stabilizer members and outer stabilizer members on the downward facing
20 surface of the bottom that are sized and configured to support the drainage tray so as to facilitate
21 drainage of fluids through the tubular member. To maintain the preferred concaved or generally conical
22 shape of the bottom, described above, it is preferred that the inner stabilizer members extend downward
23 from the bottom surface further than the outer stabilizer members such that the center portion of the
24 bottom will be kept above the periphery edge of the bottom to facilitate drainage through the drainage
25 orifice and tubular member. An example of a configuration for inner stabilizer members and outer
26 stabilizer members is shown in FIG. 7 and discussed above in Section C. As set forth in the example

1 described in Section C, the inner stabilizer member extends downward 3/16 of an inch and the outer
2 stabilizer member extends downward 3/32 of an inch. This configuration will support the center of the
3 bottom higher than the periphery edge of the bottom so that fluids will drain to the periphery edge and
4 then drain out the drainage orifice and tubular member. As set forth elsewhere (i.e., page 21, lines 8
5 through 14), a series of ring members can be located on the downwardly facing surface of the bottom to
6 support the drainage tray to accomplish the beneficial fluid drainage to the periphery of the bottom.

7 In the office action, the Examiner stated that it was unclear how the bottom is higher than
8 the periphery merely by the center rings being of a greater length than the outer rings and that it was
9 unclear from the figures how the bottom could possibly be higher than the periphery. As set forth above,
10 it is not that the center rings are of greater length than the outer rings, but that they extend downwardly
11 from the bottom surface (to the support surface such as the patio) further than the outer rings, as set forth
12 in the example. This type of configuration will place and maintain the center of the bottom generally
13 higher than the periphery edge of the bottom even when a heavy plat pot is placed inside the drainage
14 tray. This will prevent the collapse of the center (or other raised portion of the bottom depending on the
15 configuration) which would reduce the flow of fluids to the periphery where the drainage orifice is
16 beneficially located and cause fluid to gather and be left standing inside the drainage tray. Of course,
17 this could become a fertile breeding ground for mosquitos and result in odors from the accumulated
18 fluid, chemicals and plant/soil materials. Respectfully, Applicant believes that the text of the disclosure
19 and the figures referenced above does describe the subject matter set forth in claims 11, 12, 13-21, and
20 the claims which depend therefrom, in a way to enable one skilled in the art to make and/or use the
21 invention sufficiently to comply with the enablement requirements of 35 U.S.C. § 112, first paragraph.

22
23 Rejection under 35 U.S.C. § 112, second paragraph (Indefiniteness)

24 The Examiner rejected claim 1 under 35 U.S.C. § 112, second paragraph, as being
25 indefinite for failing to particularly point out and distinctly claim the subject matter which applicant
26 regards as his invention in that there is insufficient antecedent basis for the limitation "said inlet of said

1 orifice" in line 8 of claim 1. The Applicant agrees with the Examiner and has amended claim 1
2 accordingly. Specifically, the Applicant has removed the offending limitation and replaced it with the
3 limitation that the fluids drain towards at least one of the one or more side walls.

4
5 Rejection under 35 U.S.C. § 102(b)

6 With regard to the rejection of claims 1, 3-7, 10-15, 17-19 and 21 under 35 U.S.C. §
7 102(b) as being anticipated by Loudon, the Applicant respectfully disagrees with the Examiner (the
8 claims as amended herein). Loudon does not disclose each and every element of Applicant's claimed
9 invention as required for a Section 102(b) rejection. (Lindemann Maschinenfabrik GMBH v. American
10 Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984); W.L. Gore & Associates, Inc. v. Garlock,
11 Inc., 220 USPQ 303, 313 (Fed. Cir. 1983).) In particular, Loudon does not disclose the use of a bottom
12 having an upwardly facing surface that is configured to facilitate the flow of fluids from the reservoir
13 portion of the drainage tray towards one or more of the side walls, the drainage orifice being located at or
14 near the intersection of the bottom and side wall or the use of any stabilizer members on the downwardly
15 facing surface of support the bottom so as to facilitate the flow of fluid to the side walls even when a
16 heavy plant pot is placed on the bottom.

17 Loudon discloses a drainage saucer or tray that is configured to utilized with a plant stand
18 having a supporting column 5 which mounts a "spider" 6 carrying upwardly extending arms 7 to support
19 a pot or tub 8 configured to hold a plant or the like. The saucer has a base or bottom 10 with side walls 9
20 extending upwardly from the base 10. Ribs 11 on the upper face of the base 10 are configured to support
21 the pot 8 such that the pot 8 will not rest directly on the upper face of the base 10. The base 10 is
22 inclined inwardly throughout its entire surface so that fluid will drain to a drainage groove 12 in base 10.
23 One end of the groove 12 is at the lowest point in the base 10 and the other end terminates at an opening
24 13 at which a control valve 14 is provided to drain fluid from the saucer. Use of the drainage groove 12
25 allows the opening 13 to be eccentrically disposed with respect to column 5 so as to avoid column 5. To
26 reduce the strain on base 10, the bottom of wall 9 extends below base 10 such that the weight of both the

1 saucer and pot/plant is carried by the side walls, which rest on the base portions of the arms 7. Based on
2 the description, the Applicant respectfully believes that the Examiner is mistaken with regard to drainage
3 hole 13 being in pot 8, the bottom of wall 9 being a "stabilizer member" configured to support the center
4 of the bottom higher than its periphery and arms 7 being a second inner stabilizer.

5 As set forth in Applicant's specification (i.e., at Section A above), the upwardly facing
6 surface is configured to facilitate the drainage of water from the reservoir to the side walls and the inlet
7 of the orifice in order to prevent water from sitting/standing in the reservoir. As discussed in the
8 Background section of the specification (i.e., page 3, line 10 through page 4, line 4), water left standing
9 in the drainage tray below a potted plant is known to create a breeding ground for mosquitos and other
10 pests and, due primarily to fertilizers and/or other chemicals, create a smell nuisance. In addition, water
11 left standing in the drainage tray creates the potential for overflow, which can stain a person's deck,
12 patio, sidewalk or other areas and cause a slip/fall hazzard. In contrast, Applicant's invention is
13 configured specifically to drain the water away from the drainage tray to an area where water will not be
14 left standing or slip hazards created. A bottom that is configured to drain away fluids facilitates the
15 substantially complete drainage of the water. With problems such as the West Nile Virus being or
16 becoming somewhat prevalent in certain areas, it is particularly important to drain away the water that
17 flows from the potted container.

18 While Loudon is configured to drain fluid from the reservoir portion of the saucer or
19 drainage tray, it is configured for a different purpose and not configured in the manner in which
20 Applicant's drainage tray is configured. Loudon, like many pots and drainage trays, is configured to
21 drain fluid toward the center of the pot or tray. Loudon solves a problem of how to drain fluids toward
22 the center when the center includes a post or column that is part of an apparatus which supports the
23 potted plant above the ground. To avoid the inability to use a center disposed drainage hole, Loudon
24 utilizes a drainage groove 12 that collects the fluid at or near the lowest point at the center of the base 10
25 and transports the fluid in the groove to an offset drainage hole 13. Loudon is configured for a plant pot
26 that is supported sufficiently above the ground for the drainage hole 13 to drain fluid through valve 14.

1 Loudon does not attempt to drain fluid anywhere but from the bottom of the base 10 and accomplishes
2 this by inclining the base surface towards the center of the base 10. Loudon also does not disclose the
3 use of a tubular member to drain away the water in the manner that Applicant's invention. If the
4 drainage saucer of Loudon was placed on the ground it would not work for its intended purpose, namely
5 it would not support a plant pot in an upright position due to valve 14. Although without valve 14 it
6 appears that the saucer of Loudon could sit flat on a surface such as a patio or sidewalk (then it would
7 not have a "tubular member" as identified by the Examiner), it would not allow for the fluid to be
8 drained away from the saucer, even assuming that fluid flow would not be blocked by sitting on a flat
9 surface, so as to prevent the accumulation of fluid at or near the saucer and create a hazard and mess on
10 the patio or sidewalk (or other surface). In addition, the benefit of Loudon with regard to the drainage
11 groove 12 and support column 5 would be lost in such an arrangement, as there would be no need to
12 have drainage groove 12 leading to drainage hole 13 that is offset from the center of base 10 if not for
13 column 5.

14 In order to serve as a reference under 35 U.S.C. § 102(b), the reference must be enabling
15 as to the features to which anticipation is suggested. (Akzo N.V. v. U.S. Int'l Trade Comm., 1 USPQ2d
16 1241, 1245 (Fed. Cir. 1986); In re Donohue, 226 USPQ 619, 621-22 (Fed. Cir. 1985); W.L. Gore &
17 Associates, Inc., 220 USPQ at 314.) Anticipation cannot be predicated on mere conjecture regarding the
18 characteristics of various features of the invention disclosed in the reference. (See W.L. Gore &
19 Associates, Inc., 220 USPQ at 314.) With regard to Applicant's invention, Loudon does not disclose a
20 bottom that is configured to drain fluids toward the side walls of the drainage tray, the placement of a
21 drainage orifice at or near the intersection of the bottom and side wall or the use of stabilizer members to
22 support the bottom and facilitate the flow of fluids toward the side walls. In general, the saucer of
23 Loudon does not function to accomplish the objectives of Applicant's invention (as set forth above).
24 There is no suggestion in Loudon that the saucer be provided with a concave or other shaped bottom to
25 facilitate drainage toward the side wall or stabilizer members to assist in accomplishing that objective, as
26 with Applicant's drainage tray of the present invention.

1 With regard to independent claim 1, Applicant's invention of having a drainage tray with
2 a bottom having a upper surface that is configured to drain towards the side walls with a drainage orifice
3 at or near the intersection of the bottom and the side wall is not disclosed in the Loudon patent. With
4 regard to claim 9 and 10, Loudon does not disclose a concave bottom with the center of the bottom being
5 higher than the intersection of the bottom and side wall. With regard to dependent claims 11 and 12 and
6 independent claims 13 and 18, in addition to the above, Loudon does not disclose the use of one or more
7 stabilizers on the bottom and, more specifically, does not disclose the use of stabilizer members on the
8 bottom that are configured to support the center higher than the periphery of the bottom. As such,
9 Applicant believes that Loudon does not anticipate claim 1, as amended, of the present application.
10

11 Rejection under 35 U.S.C. § 103(a)

12 With regard to the obviousness rejections for claims 8, 9, 16 and 20, which are based on
13 Loudon in view of Staas, Section 103(a) only denies patentability to those inventions whose "subject
14 matter as a whole would have been obvious at the time the invention was made to a person having
15 ordinary skill in the art to which said subject matter pertains." (35 U.S.C. § 103.) As stated by the court
16 in In re Geiger, 2 USPQ2d 1276 (CAFC 1987), "[o]bviousness cannot be established by combining the
17 teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive
18 supporting the combination." (In re Geiger, 2 USPQ2d at 1278.) The motivation or suggestion to
19 combine references must exist, otherwise the determination of obviousness involves nothing more "than
20 indiscriminately combining prior art." (Micro Chemical Inc. v. Great Plains Chemical Co., 41 USPQ2d
21 1238, 1244 (CAFC 1997).) In In re Fritch, 23 USPQ2d 1780 (CAFC 1992), the Federal Circuit stated
22 the following:

23 In proceedings before the Patent and Trademark Office, the Examiner bears the burden of
24 establishing a prima facie case of obviousness based upon the prior art. The Examiner can satisfy
25 this burden only by showing some objective teaching in the prior art or that knowledge generally
26 available to one of ordinary skill in the art would lead that individual to combine the relevant
27 teachings of the references.

1 Obviousness cannot be established by combining the teachings of the prior art to produce the
2 claimed invention, absent some teaching or suggestion supporting the combination. Under
3 section 103, teachings of references can be combined *only* if there is some suggestion or
4 incentive to do so. Although couched in terms of combining teachings found in the prior art, the
5 same inquiry must be carried out in the context of a purported obvious "modification" of the
6 prior art. The mere fact that the prior art may be modified in the manner suggested by the
7 Examiner does not make the modification obvious unless the prior art suggested the desirability
8 of the modification.

9 Here, the Examiner relied upon hindsight to arrive at the determination of obviousness. It is
10 impermissible to use the claimed invention as an instruction manual or "template" to piece
11 together the teachings of the prior art so that the claimed invention is rendered obvious. This
12 court has previously stated that one cannot use hindsight reconstruction to pick and choose
13 among isolated disclosures in the prior art to deprecate the claimed invention. (In re Fritch, 23
14 USPQ2d at 1783-84 (internal quotes and citations removed).)

15 Respectfully, nothing suggests combining the teachings of Loudon with Staas or with
16 knowledge commonly known in the art, in any combination suggested by the Examiner, to arrive at
17 Applicant's invention. Nothing in either the Loudon or Staas references, or any knowledge generally
18 available to one of ordinary skill in the art, compels, teaches, suggests or even offers any incentive such
19 that an individual wanting to have a saucer or drainage tray suitable for draining away fluid that drains
20 from a potted plant in the manner of Applicant's invention would combine the teachings from Loudon
21 with Stass, as suggested by the Examiner. (See In re Fritch, 23 USPQ2d at 1783; In re Geiger, 2
22 USPQ2d at 1278.)

23 Staas discloses a saucer for a potted plant container 30 that supports the bottom 31 of
24 container 30 on a plurality of radially extending reinforcement ribs 18 (of which three are shown in the
25 figures) on its bottom wall 16. A tube 42 is hydraulically connected to the reservoir 11 formed inside the
26 saucer 10 and is moveable from an upper position that prevents drainage of water through the tube and a
27 lower position which allows controlled discharge of water from the reservoir 11 through the tube 42.
28 Figure 2 shows the container 30 sitting on ribs 18a and 18b. Staas is not concerned with keeping water
29 drained out of the drainage tray or saucer. In fact, at column 3, lines 5-10, the patentee states that the
30 reservoir retains "the excess water so that it can be reabsorbed into the soil within the pot 30, as
31 required," clearly indicating that the invention can be utilized to retain water in the reservoir. Later, at
32 column 3, lines 44 through 56, the patentee states "[s]ince it is normally desired that a level of water be

1 retained in the reservoir 11 ...,” further indicating that the Staas, in contrast to the present invention, is
2 not concerned with draining away virtually all of the water out of the reservoir. Further, Figure 2 of
3 Staas does not show a concave surface for bottom wall 16, instead the bottom wall is shown as flat or
4 horizontal, with no real means to facilitate improved flow of fluid to the discharge orifice 43. The
5 specification of Staas does not discuss the need or desirability of providing a concave bottom to facilitate
6 drainage of water from the drainage tray or saucer.

7 The Examiner takes the position that the it would be obvious to one of ordinary skill in
8 the art to modify the teachings of Loudon, as set forth by the Examiner, by moving the drainage orifice
9 to one of the side walls, as taught by Stass to optimize or create an efficient use of space. Applicant
10 respectfully disagrees with this analysis. Neither Loudon nor Stass discloses the desirability of
11 configuring the bottom of the tray to drain fluids towards the side walls of the tray so as to effectively
12 and automatically substantially drain all the fluid from the tray and allow the tray to be placed directly on
13 a flat surface or the use of stabilizer members on the downwardly facing surface to support the bottom of
14 the tray so as to facilitate the drainage of fluid toward the side wall even if a heavy plant pot is placed
15 inside the tray. Nothing in the prior art compels, teaches, suggests or even offers any incentive to
16 configure the bottom of the tray such that the tray can sit on a flat surface, such as a patio or sidewalk,
17 automatically drain the fluid toward the side walls where it can flow out of an orifice and drain away
18 from the drainage tray so as to avoid the problems discussed with standing fluid in the drainage tray or
19 with fluid being allowed to spill onto the patio or sidewalk. Likewise, nothing in the prior art compels,
20 teaches or suggests the use of one or more stabilizer members on the downward facing surface of the
21 bottom to support the bottom so that it will continue to drain fluid from the reservoir towards the side
22 walls even if a heavy plant pot is placed inside the drainage tray. As set forth in Applicant’s
23 specification (at page 19, line 6 through page 20, line 7), the stabilizer members facilitate the concave or
24 other “draining” configuration of the bottom, discussed above, and the drainage of water out of and away
25 from Applicant’s drainage tray. With regard to the specific concave configuration of claims 9, 10, 12
26 and 17-21, there is no suggestion in either Loudon or Staas to configure the bottom so as have the center

1 of the tray higher than its periphery to facilitate drainage toward the side walls. A person wanting to
2 solve the problem solved by Applicant's invention (i.e., a drainage tray for potted plants that can sit on a
3 flat surface and automatically drain water away from the potted plant and the drainage tray) would not
4 combine references directed at a column mounted saucer and a saucer having a over-flow relief valve
5 configuration on how to facilitate the drainage away from the drainage tray. Respectfully, viewing the
6 Staas reference and determining that it would have been obvious to combine it with Loudon to achieve
7 Applicant's invention may be an application of impermissible hindsight to arrive at the determination of
8 obviousness. (See In re Fritch, 23 USPQ2d at 1784.) As stated above, nothing in either the Loudon or
9 Staas patents suggest, compel or offer any incentive to provide a drainage tray having a bottom
10 configured to drain fluids to the side walls and the use of one or more stabilizer members on the bottom
11 to support the bottom to accomplish this objective, particularly maintaining the center of the bottom
12 higher than its periphery. As such, Applicant's claims are not obvious in light of Loudon and Staas.

13 In light of the above amendments and arguments, Applicant respectfully requests the
14 Examiner to withdraw the rejection of the claims set forth in the subject patent application.

15 Applicant's original application included fees for three independent claims and a total of
16 twenty claims. No claims are being added and none are being deleted, therefore, after this amendment a
17 total of twenty claims, including three independent claims, are pending in this application. No additional
18 fees for claims are believed due.

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1 In view of the foregoing, it is submitted that this application is in condition for allowance.
2 Reconsideration of the rejections and objections in light of this Amendment is requested. Applicant
3 believes that the amended claims are in condition for allowance. Allowance of claims 1 and 3-21 is
4 respectfully solicited.

5
6 Dated: January 28 2005

7 Respectfully Submitted,

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